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PETITION AND MEMORIAL

OF

DAVID CHISHOLME,

TO

HIS EXCELLENCY THE RIGHT HONOURABLE

SIR CHARLES BAGOT, K. G. C.

GOVERNOR GENERAL OF CANADA, &c. &c. &c.

WITH

AN APPENDIX.

1842.

PUBLIC ARCHIVES

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MEMORIAL.

TO

HIS EXCELLENCY THE RIGHT HONOURABLE

SIR CHARLES BAGOT,

KNIGHT GRAND CROSS OF THE MOST HONOURABLE MILITARY ORDER OF
THE BATH, ONE OF HER MAJESTY'S MOST HONOURABLE PRIVY
COUNCIL, GOVERNOR GENERAL OF BRITISH NORTH
AMERICA, AND CAPTAIN GENERAL AND GOVERNOR IN CHIEF, IN
AND OVER THE PROVINCE OF CANADA, NOVASCOTIA, NEW BRUNSWICK,
AND THE ISLAND OF PRINCE EDWARD, AND VICE ADMIRAL
OF THE SAME,

THE PETITION AND MEMORIAL OF DAVID CHISHOLME,
OF THE CITY OF MONTREAL.

MAY IT PLEASE YOUR EXCELLENCY :—

That it will be seen by the perusal of the accompanying printed, but not published, Memorial and Case, addressed to one of your Excellency's predecessors, Sir John Colborne, now Lord Seaton, as well as by the Appendix to the present petition, that your Memorialist is one of those unfortunate persons who, in consequence of having maintained their integrity as good and loyal subjects of the Crown, and, during the long political warfare which so unhappily prevailed in this Province, upheld the principles of sound Constitutional Government, have become the persecuted and afflicted victims of party concessions, and an unwise conciliatory policy, which never yet tended to, and never can be made instrumental in securing the true interests of the nation.

That it will also be seen from these documents, that your

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Memorialist, notwithstanding the truth and uprightness of his cause, has hitherto been unable to obtain any redress of the wrongs done to him by an unjust and arbitrary removal from office, which he had long held with untarnished integrity of conduct, and the consequent violence inflicted upon his character and fortunes. That, nevertheless, your Memorialist reposes such unlimited confidence in the justice and impartiality of your Excellency, as well as in the protective authority and wisdom of the illustrious Crown and Government whom you represent, that he by no means despairs of obtaining final redress of the grievous wrongs to which he has alluded ; and in that just hope and full expectation, he prefers the present additional appeal for justice—that justice to which he conceives himself to be pre-eminently entitled.

That it appears, that the late Lord Sydenham, upon reference made to his Lordship by Lord John Russell, late Secretary of State for the Colonies, had made an unfavourable report upon the claims of your Memorialist, but upon what grounds, and in consequence of what course of inquiry, your Memorialist has not yet been able to ascertain ; though, as will be seen from number eleven of the appendix, a different result had been anticipated, even by the late Colonial Secretary, much to the credit of his Lordship's discernment and generous wish to redress the wrongs of an injured and oppressed subject. That, therefore, no other resource is left to your Memorialist, but respectfully and earnestly to pray, that, as far as to your Excellency may seem meet, you may be pleased to take the case of the Memorialist into consideration, and secure to him that compensation for violated rights, for which he has so long, but far from groundlessly, been contending in vain ; and that if, in the course of such consideration, it should please your Excellency to refer this case to

the decision of Her Majesty's Government in England, your Memorialist is authorised to state, that the Attorney General of this portion of the Province, is now in that country, and, being in possession of every fact and circumstance relating to it, he will at all times be ready to furnish such information as may be deemed necessary by the advisers of our beloved Sovereign.

Your Memorialist, as in duty bound, will ever pray.

DAVID CHISHOLME.

1st February, 1842.

A P P E N D I X.

I.

MEMORIAL OF MR. CHISHOLME TO THE QUEEN.

To the Queen's most Excellent Majesty:

The humble Memorial and Petition of David Chisholme, of the City of Montreal, in the Province of Lower Canada.

MAY IT PLEASE YOUR MAJESTY :—

That for many years your Memorialist had the honour of serving the illustrious Crown which your Majesty now so auspiciously wears; and that with credit to himself, and, he ventures to assert, with no inconsiderable advantage to the state.

That in 1836, while holding the important offices of Clerk of the Peace and Coroner of the district of Three Rivers, in your Majesty's Province of Lower Canada, your Memorialist was suddenly removed from those offices by the Right

Honourable the Earl of Gosford, then Governor in Chief of the Province. That such removal from office was not in consequence of any misconduct on the part your Memorialist in the execution of his duties, but merely alleged of him in his private capacity as Agent for the Secretary of the Province in the distribution of Shop and Tavern Licenses in the said district. That it is satisfactory to your Memorialist to be able to state to your Majesty, that, though not responsible in his public capacity to charges brought against him as a private individual, he has nevertheless completely established his innocence of those charges, as is made fully manifest by various documents submitted to your Majesty's Provincial Government from time to time ; but more especially in a Memorial and Case presented in the course of last year, to the Right Honourable Lord Seaton, your Majesty's late distinguished Representative in this Province.

That besides this, it has ever been the good fortune of your Memorialist to have merited, both in his capacity of a public servant of the Crown, and for his undeviating loyalty, the approbation of some of the most eminent Governors that have ruled over these your Majesty's Dominions in North America, well knowing, as they did, that it has always been his object, as far as in him lay, to promote piety to God, loyalty to his Sovereign, obedience to the laws, peace and contentment among the people, and the extension of the boundaries of true freedom and good Government.

That your Memorialist, therefore, most humbly prays, that your Majesty may be graciously pleased, of your benign grace and favour, to take the premises into consideration ; and to restore to office, or otherwise compensate the losses sustained by your Memorialist.

And your Petitioner, as in duty bound, shall ever pray for the welfare and true happiness of Your Majesty, his Gracious Queen and Sovereign.

DAVID CHISHOLME.

August 12, 1840.

II.

LETTER FROM MR. CHISHOLME TO LORD SEATON.

MONTREAL, *23d January*, 1840.

MY LORD,—I hope your Lordship will not be offended if I embrace the present opportunity to state, that since your Lordship's departure from this Province, I have been unable to find out what may have been the fate of the Memorial and Case, which, through the hands of my friend, the Attorney General, was presented to your Lordship on my behalf in the course of last summer. I have applied to Mr. Ogden for information, but without success. He thinks, however, that in consequence of the interest with which your Lordship was so kind as to view the matter, the Memorial and Case may have been taken to England for the purpose of being more directly submitted to the consideration of the Colonial Secretary. Should this conjecture prove correct, I not only beg leave to express my ready acquiescence in the course that has been pursued, but respectfully to tender to your Lordship my most grateful acknowledgements for the interest which you have thus taken in the clouded fortunes of one who has had no other opportunity of expressing his unqualified admiration of the public and private virtues of the late Governor General of Canada, than the feeble but sincere and unbought support which he always endeavoured to give to your Lordship's administration, through the medium of the Montreal Gazette, as Editor. Should your Lordship be pleased to pro-

mote my views, as set forth in my Memorial, you will confer a lasting favour upon me, being otherwise friendless and unprotected. I feel—deeply feel—the great injury which I have sustained at the hands of my oppressors ; but I forgive them, and trust to the goodness of a beneficent Providence for a final and complete redress of all my wrongs.

I am informed that a number of the public officers in this country will soon be permitted to retire on pensions ; and should there be any disposition at the Colonial office to do me justice, I should have no objection to become one of the number, with an allowance in lieu of office of from two to three hundred pounds a year for life. I have every reason to believe, that, had Lord Glenelg continued in office, I should long ago have been reinstated to my situation in this country, or received an equivalent for my life, as may be perceived by the subjoined extract from a letter to me from my friend, Mr Fraser, Commissioner of the Land Company at Sherbrooke—a gentleman not unknown, I believe, to Lord John Russell. But I will take leave to rest my hard case in the hands of your Lordship, being fully persuaded, that whatever influence your Lordship may possess will be exercised in my behalf. I believe it is the intention of Mr. Ogden to trouble your Lordship upon the same subject ; but I trust it will not be deemed improper in me to put your Lordship in possession of my sentiments directly from my own hand.

And now, my Lord, permit me to congratulate your Lordship upon your recent promotion to the Peerage—a rank not less meritoriously earned, than the distinction will prove acceptable and honourable to the Empire at large. I have had already the honour of publicly congratulating your Lordship upon the gratifying event through the columns of the Montreal Gazette ; but it is a higher gratification to me to be

again able to do so in this manner. I had the proud satisfaction of having been the first to communicate the news to many of your Lordship's warm friends in this city ; and nothing could be more delightful than the feeling of real joy with which the intelligence was received by the whole community.

I have the honour to be my Lord, Your Lordship's most obedient and humble Servant.

DAVID CHISHOLME.

The Right Honourable Lord Seaton, &c. &c. &c.

Extract referred to in the foregoing letter.

SHERBROOKE, 18th March, 1834.

"MY DEAR SIR,—I attend to your wishes in regard to your personal interests, and may safely assure you, that if Lord Glenelg continues so long in office, or even if there is reference to his opinion by a successor, you are perfectly certain of continuing to enjoy any appointment that may be conferred upon you by the present Provincial Government. In fact I know that your appointment would be rather felt in the circumstances a grateful relief at the Colonial Office."

III.

LETTER FROM LORD SEATON TO MR. CHISHOLME.

LONDON, May 26, 1840.

DEAR SIR,—I beg you will accept my apologies for the delay which has taken place in my forwarding a reply to your letter of the 23d January.

Your Memorial, which I received from you at Montreal, was transmitted to the Executive Council at Quebec by my directions, soon after I had consulted with the Attorney General, as to the best mode of promoting your views, and of obtaining an opinion respecting the charges which had occasioned your removal from the offices which you had held

at Three Rivers. I received no report upon your statement before I embarked at Quebec ; but I conclude that the Clerk of the Council must have brought it under the consideration of the Board ; and I have requested Mr. Ogden to inquire whether any report had been made upon the subject.

Having been long acquainted with your political labours, and being persuaded that they have contributed to counteract the factious proceedings of the sepratists in both Provinces, I had hoped that an opportunity would offer of employing you with advantage to yourself and the Government ; but you were aware of the difficulty which I found in sanctioning your appointment to any office at the time you applied for employment. I will request the Attorney General to mention your name and claims to the Governor General ; and I shall have great pleasure in forwarding your Memorial to the Secretary of State for the Colonies ; I believe, however, every Colonial appointment is left for the disposal of the Governor General.

I remain,

Dear Sir,

Your's faithfully,

SEATON.

IV.

LETTER FROM MR. OGDEN, ATTORNEY GENERAL, TO
MR. CHISHOLME.

FRIDAY, *1st January*, 1841.

MY DEAR SIR,—I received yesterday a letter from Lord Seaton, in which he requests me to inform you that “ he has not yet received an answer from the Colonial Office in

reply to his letter, in which he forwarded your Memorial and statements; that he acquainted Lord John Russell, officially and privately, with the reasons assigned for not bringing the case before the Executive Council of Lower Canada, and mentioned that you appear to have refuted the charges in respect to your conduct as Private Agent of the Provincial Secretary; that you had been early persecuted by the House of Assembly, or by the leading Members of it, in consequence of the support which you gave to the administration of Lord Dalhousie, and of your able political writings; and that if you could be employed again under the Crown, that he had no doubt you would be found a useful public servant."

Wishing you and Mrs. Chisholme many happy returns of the new year.

I remain, my dear Sir,

Yours very faithfully,

C. R. OGDEN.

V.

LETTER FROM THE MAGISTRATES OF THREE RIVERS TO MR. MURDOCH, CHIEF SECRETARY.

THREE RIVERS, *11th September*, 1841.

SIR,—The office of the Clerk of the Peace for this District having become vacant by the death of Narcisse Turcotte, Esquire, it would be very gratifying to us, and promote the public good, if His Excellency the Governor General, in filling up the vacancy, were to re-instate David Chisholme, Esquire, in this situation, which he had formerly so ably filled, and so much to our satisfaction.

We therefore beg that you will have the goodness to submit this our request, for His Excellency's favourable consideration.

We have the honour to be,

Sir,

Your very obedient humble servants,

S. GRANT, J. P.

ANGUS M'DONALD, J. P.

B. LUPIEN, J. P.

JAMES DICKSON, J. P.

L. M. CRESSE, J. P.

JOSEPH BEAUBIEN, J. P.

W. C. HANSON, J. P.

JAMES BELL, J. P.

H. M'AULAY, J. P.

T. W. C. MURDOCH, Esq.,

Chief Secretary.

VI.

LETTER FROM MR. CHISHOLME, TO MR. MURDOCH CHIEF SECRETARY.

MONTREAL, 15th September, 1841.

SIR,—I have just learned that the Magistrates of Three Rivers have done me the favour of stating to you, that, in filling the vacant office of Clerk of the Peace for the District of Three Rivers, it would be gratifying to them if His Excellency the Governor General should reinstate me in that office. I therefore beg to mention to you, for the information of His Excellency, that I respectfully solicit, and would gratefully accept the office in question; trusting to future

events and circumstances for a more ample indemnification for my removal from the offices which I formerly held in the District of Three Rivers. I have the honour to be, sir, your most obedient humble servant,

DAVID CHISHOLME.

T. W. C. MURDOCH, Esq.,
Chief Secretary.

VII.

LETTER FROM THE HON. M. BELL, TO CAPTAIN ROBERTSON, THREE RIVERS; THE FATHER-IN-LAW OF MR. CHISHOLME.

THREE RIVERS, *September, 1841.*

MY DEAR SIR,—I return you the papers you put into my hands this morning. It will be gratifying to the friends of Mr. Chisholme, and to no one more than myself, to have him once more among us. A few days will decide the question, but should he be appointed to the vacant situation here, I trust it will only be for a short period, and until such time as something better offers, to reward him for what he has suffered from an unjust act of a former Governor, under the influence of a deep laid conspiracy to ruin him.

Yours truly,

M. BELL.

Captain Robertson.

VIII.

LETTER FROM MR. CHISHOLME TO MR. MURDOCH, CHIEF SECRETARY.

MONTREAL, *28th October, 1841.*

SIR,—It would much oblige me, if you would do me the favour to let me be informed, whether you received a

communication from me, of the 15th ultimo, referring to another communication from the Magistrates of Three Rivers, with respect to the filling up of the then vacant office of Clerk of the Peace for the District, and which, I understand, also remains unacknowledged.

The official acknowledgement of these communications, is essential to the prosecution of my claims upon the Government.

Permit me at the same time to inquire, whether it be compatible with your official duties to favour me with a copy of Lord Sydenham's Despatch to the Secretary of State for the Colonies, in reply to the reference made to his Lordship by Lord John Russell, with respect to my case.

I cannot conceal from you that I was not a little surprised at one of the views which I understand Lord Sydenham had taken of the case in question ; and that the reason assigned for not restoring me to official employment under Government, was the part I had taken against the popular branch of the late Legislature of Lower Canada. I freely admit, that, in my humble efforts to maintain sound Constitutional principles, and the general views of the Imperial Government, with respect to this country, I did every thing in my power to oppose the machinations of a factious and treasonable party in the late House of Assembly, and I glory in having done so, and of having pointed out, years before they were attempted to be carried into effect, the treasonable designs of that party. By doing so, I have been deeply injured and oppressed by the Government whom it was my sole object to serve. But this was never made a formal or open charge against me, nor did it constitute any of the ostensible grounds on which I was so unjustly removed from office. You will, therefore, the more readily conceive my surprise at the new charge brought

against me in Lord Sydenham's despatch, which is an additional reason for my being favoured with a copy of it, in order to prepare myself to meet it in the proper quarter. If, as in my case, the friends of the constitution in this country are destined to forfeit the esteem and protection of Government by taking its part against the illegal and factious conduct of opponents, and, on the other hand, become the victims of these opponents, in consequence of having done so, no friend of order and good Government can be induced to sacrifice his private peace and interests by promoting the welfare of his country, and there will speedily be an end to the expression of public opinion in favour of a Government that will decline to vindicate its acts and principles by the protection and support of those who may feel it to be their duty, as good and loyal subjects, to maintain the principles of sound constitutional Government.

Lord Sydenham and yourself must have been well aware that, as Editorial writer for the Montreal Gazette, no public writer in the Province has given more efficient support to his Lordship's Constitutional measures than I have done. I was the very first who deprecated the impolicy and injustice of receiving his Lordship with reluctance or coldness in the Colony, in consequence of his supposed previous opinions on the timber duties; and, until the day of his lamented death, I never ceased to advocate, in as far as I could, such of his measures—and they were many—as I conceived to have been beneficial to the Province. On the great question of the Union, I am neither vain enough nor afraid when I say, that I have given the measure an aid for which neither Government nor the country can ever sufficiently reward me.*

* In conjunction with the late Honourable John Richardson and others, I was among the first who, in 1822, advocated the policy of the Union; and have never ceased to continue to do so until its final accomplishment, in 1841.
D. C.

But we often find, that those who serve their country best, are among the last who are recognised as its benefactors. Such at least is my condition, though I am far from regretting the part I have taken, in promoting good and stable Government in this Province.

I have the honour to be, Sir,

Your very obedient servant,

DAVID CHISHOLME.

T. W. C. MURDOCH, Esq.,

Chief Secretary.

IX.

LETTER FROM MR. CHISHOLME TO LORD SEATON.

MONTREAL, 23d November, 1841.

MY LORD,—With reference to the letter which I took leave to address to your Lordship on the 11th ultimo, containing a statement of my case, as I understand it to have been disposed of by the late Lord Sydenham, I think it proper to inform your Lordship, that the then vacant office of Clerk of the Peace for the District of Three Rivers, has been filled up by the Administrator, without any reference to my request upon that subject, or the representation of the Magistrates, both of which remain unnoticed and unacknowledged to this day, notwithstanding that I addressed a second letter to the Chief Secretary, soliciting the mere acknowledgement of the documents in question. I begged at the same time, if compatible with official duty, to be favoured with a copy of Lord Sydenham's despatch to the Colonial Secretary; but this application shared the fate of all the rest.

Under these circumstances I again venture to throw myself upon the kind and friendly consideration of your Lord-

ship, in the hope that with his usual decision and energy of character, Lord Stanley may be prevailed upon to redress my wrongs—wronges which I have now buffetted for nearly six long years, and which have, indeed, made me a man of a sorrowful heart, though I endeavour to resign myself to the inscrutable ways of Providence.

Should Lord Stanley, as I have every reason to hope and believe, be disposed to take a favourable view of my case, and contemplate my restoration to office, I must candidly own, that I should prefer, in the present indifferent state of my health, to be placed as a retired officer, on the consolidated civil list of the Province, for the small annual pension of £200. This would enable me to employ my pen in the service of Government at pleasure, and also complete a work in which I have made some progress, to be called the "Constitutional and Political History of Canada," from the Conquest to the Union. But I leave myself entirely to the superior judgment and discretion of your Lordship, trusting only that I shall be pardoned for the many liberties I take, and the trouble which I give.

I have the honour to be, with sentiments of gratitude and the highest esteem, my Lord, your Lordship's most obedient and very faithful servant.

DAVID CHISHOLME.

The Right Honourable Lord Seaton.

X.

EXTRACT FROM AN OPINION OF JAMES STEWART, ESQ.,
NOW SIR JAMES STEWART, BART. CHIEF JUSTICE
OF LOWER CANADA, ON VARIOUS POINTS RELATIVE
TO THE INQUIRY INSTITUTED BY MESSRS. DALY AND
VEZINA, RELATIVE TO THE CONDUCT OF MR. CHIS-
HOLME; DATED QUEBEC, 25TH JANUARY, 1837.

“The proceedings which led to the removal of Mr. Chisholme, *though in my opinion, highly censurable, as being unconstitutional and improper, and calculated to produce oppression*, could furnish no grounds for a criminal prosecution of any kind.”

XI.

EXTRACT OF A LETTER FROM LORD SEATON TO A
FRIEND OF MR. CHISHOLME'S, IN ENGLAND, DATED
19TH NOVEMBER, 1841.

“The inclosure is from Mr. Chisholme, whose case I brought before Lord John Russell, with such observations as appeared to me would produce a favourable result. Lord John communicated my statement to Lord Sydenham, and, I believe, even suggested that the petitioner should be provided for.”

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